



January 17, 2020

By ECF

The Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *United States Securities and Exchange Commission et. al. v. Platinum Management, LLC et. al., Case No.: 1:16-cv-06848-BMC*

Dear Judge Cogan:

On behalf of Joseph SanFilippo, we write in response to the Court's Order, dated December 12, 2019, inviting parties in interest to make submissions on "whether it would be appropriate for this Court to dismiss the case without prejudice to the right of the Receiver or creditors to file a bankruptcy petition against the company." Mr. SanFilippo is one such "creditor," having filed a motion to compel the Receiver to indemnify him promptly for his reasonable attorney's fees and defense costs following his acquittal on all counts in the *Platinum* criminal case. [Dkt. No. 490]

Mr. SanFilippo's rights to immediate indemnification are a function of Delaware law and would therefore not be affected if required to be asserted in another forum, such as a bankruptcy proceeding. However, Mr. SanFilippo urges the Court *not* to dismiss the present case. For several reasons, Mr. SanFilippo's rights should be adjudicated in this proceeding by this Court.

First, this Court is uniquely familiar with the nature of the Receiver's mission to marshal assets to reimburse deserving creditors, and its performance of that mission to date. It is also uniquely familiar with the issues raised by Mr. SanFilippo's claims to advancement and indemnification (first raised by motion in October 2018). To start over again, before a new court with no such familiarity, would be a disservice to the moving parties. *See Esbitt v. Dutch-American Mercantile Corp.*, 335 F.2d 141, 143 (2d Cir. 1964) (Even if appellant should have filed a bankruptcy petition, "the receivership has progressed almost to completion without objection and it would apparently not be in the interests of the parties to direct that further proceedings be diverted into bankruptcy channels.")

Second, this Court, as the trial court in the *Platinum* criminal case, is also in the best position to appreciate Mr. SanFilippo's total vindication at trial. The principal purpose of indemnification under Delaware law is to empower corporate officials "to resist unjustified lawsuits" and to assure them that their employer will "absorb the costs of defending their honesty and integrity." *VonFeldt v. Stifel Fin.*

Corp., 714 A.3d 79, 84 (1998). This Court knows firsthand, after nine weeks of trial, that Mr. SanFilippo's prosecution was unjustified and at the same time made expensive demands upon his ability to defend his honesty and integrity. For these reasons, Delaware law requires that he be indemnified promptly for his defense.

Earlier today we received a copy of the SEC's Memorandum in response to the Court's December 12th Order [Dkt. No. 513]. While Mr. SanFilippo does not disagree with the thrust of the Memorandum, which also opposes dismissal of the Receivership, for the record we vigorously reject the SEC's suggestion that "there is no basis at this time to dismiss the civil enforcement action against any of the defendants." [*Id.* at 4]. In fact, as we will demonstrate if necessary, the SEC's complaint is fatally flawed by false and fictitious allegations against Mr. SanFilippo – to an even greater extent than the doomed criminal indictment.

We appreciate the Court's attention to these matters.

Respectfully submitted,



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